

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of:)	
)	
BellSouth Corporation)	
)	
Petition for Rulemaking to Change)	RM-11299
The Distribution Methodology for Shared)	
Local Number Portability and)	
Thousands-Block Number Pooling Costs)	
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**REPLY COMMENTS OF
VONAGE HOLDINGS CORP.**

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Summary

Vonage Holdings Corp. (“Vonage”) opposes BellSouth Corporation’s (“BellSouth”) proposed cost recovery methodology change. The Act only allows pooling and LNP cost recovery to be imposed on carriers. Adopting BellSouth’s proposal would violate the Act by imposing on SBC-IS—and other information service providers granted direct access to numbering resources—an obligation to fund the shared cost of number portability. This fatal flaw cannot be eliminated by exempting non-carriers because imposing usage-based charges on some users but not others would violate the Act’s requirement of “competitive neutrality.”

Vonage agrees with the numerous commenters in this proceeding that argue that BellSouth’s proposed methodology, if adopted and applied only to carriers, would also violate the competitive neutrality requirement of the Act as between classes of carriers. BellSouth’s proposal will adversely affect small providers and new entrants that disproportionately utilize LNP and pooling resources. A usage-based system would act as a barrier to entry in these situations, and would reduce overall competition in the marketplace by favoring large, incumbent carriers over new market entrants and small operators. The Commission rejected a usage-based system when establishing the current methodology, and there is no principled justification for reversing that decision and adopting a usage-based system today.

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I. INTRODUCTION AND BACKGROUND

Vonage Holdings Corp. (“Vonage”) submits these reply comments in response to the Petition for Rulemaking (“Petition”)¹ filed by BellSouth Corporation (“BellSouth”) in the above-referenced docket, as well as the oppositions and comments filed in response to the Petition. Because Vonage requires numbering resources, and allows customers to port their telephone numbers in the provision of its voice over Internet Protocol (“VoIP”) service, the Company will be affected by any Commission modification of the current methodology for recovering the shared industry costs of local number portability (“LNP”) and the administration of thousands-block number pooling (“pooling”) (together, the “LNP Fund”). Vonage is opposed to the changes proposed by BellSouth, and urges the Commission to deny the Petition. BellSouth’s proposal would violate the Act’s requirements, and would grant certain classes of communications providers a competitive advantage in the marketplace.

¹ See *BellSouth Corporation Petition for Rulemaking to Change The Distribution Methodology for Shared Local Number Portability and Thousands-Block Number Pooling Costs*, Petition for Rulemaking, RM-11299 (filed Nov. 3, 2005) (“*Petition*”).

A. Summary of BellSouth's Petition

BellSouth's Petition requests that the Commission initiate a rulemaking to determine whether the Commission's rules for recovering the costs of LNP and pooling should be modified.² Specifically, BellSouth seeks to end the current revenue-based methodology and move to a usage-based contribution system.³ To justify this request, BellSouth notes that market conditions have changed enough to warrant such a move and that a usage-based system will connect the "benefits" of LNP and pooling usage to the "costs" associated with those programs. These rationalizations, however, cannot mask the fact that BellSouth's proposal violates the Act's requirement of competitive neutrality, exempts carriers that do not upload numbering data—but still benefit from LNP and pooling—from contributing to the LNP Fund,⁴ and requires non-telecommunications carriers to contribute to the LNP Fund in violation of the Act. Vonage agrees that BellSouth has provided no compelling reason for the Commission to change its rules at this time and urges the Commission to deny BellSouth's Petition.⁵

² Vonage also agrees with COMPTTEL that the Commission should deny the Petition based on its procedural flaws. *See BellSouth Corporation Petition for Rulemaking to Change The Distribution Methodology for Shared Local Number Portability and Thousands-Block Number Pooling Costs*, COMPTTEL Statement in Opposition, RM-11299, at 1-2 (filed Jan. 5, 2006).

³ *See Petition*, at 1.

⁴ *See Telephone Number Portability*, Third Report and Order, CC Docket No. 95-116, RM 8535, 13 FCC Rcd. 11701, ¶ 89 (1998) ("*Third Report and Order*") ("all telecommunications carriers that depend on the availability of telephone numbers will benefit from number portability because it allows subscribers to retain their telephone numbers when changing local service providers, and because it facilitates the conservation of telephone numbers through number pooling."). *See also See BellSouth Corporation Petition for Rulemaking to Change The Distribution Methodology for Shared Local Number Portability and Thousands-Block Number Pooling Costs*, COMPTTEL Statement in Opposition, RM-11299, at 3 (filed Jan. 5, 2006); *BellSouth Corporation Petition for Rulemaking to Change The Distribution Methodology for Shared Local Number Portability and Thousands-Block Number Pooling Costs*, Comments of T-Mobile USA, Inc., RM-11299, at 10 (filed Jan. 5, 2006).

⁵ *See, e.g., BellSouth Corporation Petition for Rulemaking to Change The Distribution Methodology for Shared Local Number Portability and Thousands-Block Number Pooling Costs*,

B. VoIP Provider Access to Numbering Resources and Port Processing Is Generally Restricted Under the Commission's Current Rules

Vonage does not provide telecommunications services pursuant to Title II of the Act, and as such cannot directly obtain numbering resources from the North American Numbering Plan Administrator ("NANPA") or the Pooling Administrator ("PA"). Commission Rule 52.15(g)(2)(i) requires that an applicant requesting North American Numbering Plan numbering resources must be "authorized to provide service in the area for which the numbering resources are being requested."⁶ The Commission has interpreted this rule as requiring "carriers [to] provide, as part of their applications for initial numbering resources, evidence (*e.g.*, state commission order or state certificate to operate as a carrier) demonstrating that they are licensed and/or certified to provide service in the area in which they seek numbering resource[s]."⁷ Because Vonage is not a telecommunications carrier, and is not subject to state certification requirements,⁸ the Company is unable to obtain direct numbering resources under the Commission's current rules, and does not directly process port requests.

Comments of Cox Communications, Inc., RM-11299, at 3 (BellSouth provides no "adequate justification for such a radical leap from one methodology to an altogether different one"). *See also BellSouth Corporation Petition for Rulemaking to Change The Distribution Methodology for Shared Local Number Portability and Thousands-Block Number Pooling Costs*, Integra Telecom's Opposition to Petition for Rulemaking, RM-11299, at 3 (filed Jan. 5, 2006); *BellSouth Corporation Petition for Rulemaking to Change The Distribution Methodology for Shared Local Number Portability and Thousands-Block Number Pooling Costs*, Comments of XO Communications Services, Inc. and Xspedius Communications, LLC in Opposition to BellSouth's Petition for Rulemaking to Change Distribution Methodology for Local Number Portability and Thousands-Block Number Pooling, RM-11299, at 7 (filed Jan. 5, 2006).

⁶ 7 C.F.R. § 52.15(g)(2)(i).

⁷ *Numbering Recourse Optimization*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 99-200, 15 FCC Rcd 7574, ¶ 97 (2000).

⁸ *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, 19 FCC Rcd. 22404, ¶ 46 (2004).

Instead, Vonage must obtain access to telephone numbers (and administration of those numbers) through competitive local exchange carriers (“CLECs”) by purchasing Primary Rate Interface (“PRI”) or Direct Inward Dialing (“DID”) services. These telephone numbers are necessary for Vonage customers utilizing a broadband IP network to receive calls from calling parties connected to the traditional public switched telephone network (“PSTN”).⁹ Through its payments to CLEC partners, Vonage and other similarly situated VoIP service providers indirectly pay the LNP and pooling shared industry costs.

C. The *SBC-IS Order* Allows an Information Service Provider to Obtain Numbering Resources and Process Port Requests but Does Not Require SBC-IS to Contribute Directly to the LNP Fund

Unless and until the Commission acts on its petition seeking waiver of the rules cited above, Vonage cannot obtain numbering resources directly from the NANPA or PA. To date, the Commission has granted only one waiver of those rules for another information service provider: SBC Internet Services, Inc (“SBC-IS”).¹⁰ In the *SBC-IS Order*, the Commission granted a non-telecommunications service provider access to NANPA numbering resources. “Specifically, subject to the conditions set forth in this order, we grant SBCIS permission to obtain numbering resources directly from [NANPA] and/or the Pooling Administrator (PA) for use in deploying IP-enabled services, including Voice over Internet Protocol (VoIP) services.”¹¹

In granting this waiver to SBC-IS, the Commission imposed numerous numbering requirements on the company. Specifically, SBC-IS must “comply with the Commission’s

⁹ *Vonage Holdings Corp. Petition of For Limited Waiver of Section 52.15(g)(2)(i) of the Commission’s Rules Regarding Numbering Resources*, Petition for Limited Waiver, CC Docket No. 99-200 (filed Mar. 4, 2005).

¹⁰ *See generally Administration of the North American Numbering Plan*, CC Docket No. 99-200, Order, FCC 05-20 (rel. Feb. 1, 2005) (“*SBC-IS Order*”)

¹¹ *SBC-IS Order*, ¶ 1.

numbering utilization and optimization requirements and industry guidelines and practices, including numbering authority delegated to state commissions.”¹² Further, the Commission stated that SBC-IS may “obtain blocks of 1,000 numbers in areas where there is pooling, as opposed to obtaining a block of 10,000 numbers as a LEC customer.”¹³ Finally, pursuant to the *SBC-IS Order*, that company is “responsible for processing port requests directly rather than going through a LEC.”¹⁴ In sum, SBC-IS, a self-described information service provider, may access thousand-block number pooling resources, and may process its own port requests rather than using a telecommunications carrier. However, nothing in the Commission’s *SBC-IS Order* explicitly required SBC-IS to contribute directly to the LNP Fund.

Numerous parties, including Vonage, have filed waiver petitions with the Commission seeking similar treatment.¹⁵ To date, the Commission has neither granted nor denied these requests. Should these waivers be granted, numerous non-telecommunications providers would

¹² *SBC-IS Order*, ¶ 9.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See, e.g., *Administration of the North American Numbering Plan; RNK, Inc. Petition For Limited Waiver of Section 52.15(g)(2)(i) of the Commission’s Rules Regarding Numbering Resources*, Petition for Limited Waiver, CC Docket No. 99-200 (filed Feb. 4, 2005); *Administration of the North American Numbering Plan; Petition of Nuvio Corporation For Limited Waiver of Section 52.15(g)(2)(i) of the Commission’s Rules Regarding Numbering Resources*, Petition for Limited Waiver, CC Docket No. 99-200 (filed Feb. 14, 2005); *Dialpad Communications, Inc. Petition of For Limited Waiver of Section 52.15(g)(2)(i) of the Commission’s Rules Regarding Numbering Resources*, Petition for Limited Waiver, CC Docket No. 99-200 (filed Feb. 14, 2005); *VoEx, Inc. Petition of For Limited Waiver of Section 52.15(g)(2)(i) of the Commission’s Rules Regarding Numbering Resources*, Petition for Limited Waiver, CC Docket No. 99-200 (filed Mar. 4, 2005); *Vonage Holdings Corp. Petition of For Limited Waiver of Section 52.15(g)(2)(i) of the Commission’s Rules Regarding Numbering Resources*, Petition for Limited Waiver, CC Docket No. 99-200 (filed Mar. 4, 2005) (“*Vonage Waiver Petition*”). See also *Vonage Holdings Corp. Petition of For Limited Waiver of Section 52.15(g)(2)(i) of the Commission’s Rules Regarding Numbering Resources*, Emergency Request for Expedited Approval of Vonage’s Petition for Limited Waiver of Section 52.15(g)(2)(i), CC Docket No. 99-200 (filed Mar. 4, 2005) (“*Vonage Emergency Request*”).

have access to thousand-block number pooling, and be required to adhere to the Commission's LNP requirements. To date, however, only one non-telecommunications service provider has been granted such access: SBC-IS, an ILEC affiliate. As explained below, adopting BellSouth's proposal would violate the Act by imposing on SBC-IS—and other information service providers granted direct access to numbering resources—an obligation to fund the shared cost of number portability and pooling.

II. BELLSOUTH'S PROPOSAL VIOLATES THE ACT

A. BellSouth's Proposed Methodology, If Imposed on Information Service Providers, Would Violate the Act's Requirement that *Carriers* Contribute to Shared LNP and Pooling Costs

The Act limits the means by which the Commission may recover the shared costs of LNP and pooling. Section 251(e)(2) of the Act states:

The cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by *all telecommunications carriers* on a *competitively neutral* basis as determined by the Commission.¹⁶

BellSouth's cost-recovery methodology, if adopted by the Commission, would violate this restriction by requiring SBC-IS—and any other information service provider granted a similar waiver—to pay shared costs for LNP and pooling. Specifically, BellSouth has requested that the Commission implement a usage-based mechanism that requires service providers to pay for those LNP and pooling costs that they cause. However, as the Commission is aware, there is now at least one *non-carrier* processing LNP requests and obtaining thousand-blocks of numbers that, by definition, would qualify as a service provider under BellSouth's proposal.

¹⁶ 47 U.S.C. § 251(e)(2) (emphasis added).

Under the plain language of the statute, the Commission may not directly impose LNP and pooling costs on information service providers, such as SBC-IS.¹⁷ The Commission implicitly recognized this limitation when it did not include cost-sharing for LNP or pooling among the list of conditions in granting the SBC-IS waiver.¹⁸ Vonage agrees with the opposition filed by Time Warner in this regard.¹⁹ It is clear that “the Commission is precluded from imposing regulations applicable only to ‘telecommunications carriers’ under the Act to entities that fall outside that classification.”²⁰

BellSouth argues that the Commission is free to modify a prior statutory interpretation based on changed circumstances.²¹ However, because the statute in this case is not ambiguous—only telecommunications carriers are subject to LNP and pooling costs—any changed market conditions may not justify an interpretation that conflicts with the plain language of the statute. Where the intent of Congress is clear, the Commission has no discretion to interpret the Act to the contrary.²² Information service providers, such as SBC-IS, are not telecommunications carriers. Applying the methodology proposed by BellSouth would contravene the plain language

¹⁷ Vonage again notes that under the current assessment methodology, information service providers and other users of numbering resources *indirectly* pay into the cost-recovery mechanisms through the purchase of those numbering resources and related numbering administration services from CLEC partners. These costs are passed on to Vonage when it purchases services that include numbering resources. The revenue-based methodology thus captures all users of numbering resources on a competitively-neutral basis.

¹⁸ See generally *SBC-IS Order*.

¹⁹ See *BellSouth Corporation Petition for Rulemaking to Change The Distribution Methodology for Shared Local Number Portability and Thousands-Block Number Pooling Costs*, Opposition of Time Warner Telecom, RM-11299, at 8 (filed Jan. 5, 2006) (“*Time Warner Opposition*”).

²⁰ *Id.*, at 9.

²¹ See *Petition*, at 16, 26.

²² *Chevron U.S.A. Inc. v. Natural Resources Defense Counsel, Inc.*, 467 U.S. 837, 842-3 (1984).

of Section 251(e)(2) if applied to thousands-block users and LNP processors such as SBC-IS. This would likewise be true for any other information service provider granted a waiver of the numbering rules by the Commission. As noted above, several information service providers, including Vonage, have such petitions pending.²³ Because adopting BellSouth's proposal would impose costs on those entities specifically exempted under the Act, the Commission must reject BellSouth's proposal.

This fatal flaw cannot be eliminated by exempting non-carriers. Imposing usage-based charges on some users but not others would violate the Act's requirement of "competitive neutrality." The Commission's two-part test to determine whether a cost recovery system is "competitively neutral" is that: (1) it must not give one service provider an appreciable, incremental cost advantage over another service provider when competing for a specific subscriber, and (2) it must not disparately affect the ability of competing service providers to earn a normal return.²⁴

If removed from BellSouth's usage-based methodology, information service providers, such as ILEC-affiliate SBC-IS, would not be required to contribute for "those LNP and pooling costs they cause."²⁵ Allowing certain service providers to evade cost-sharing requirements in this manner would place those carriers that remain subject to that methodology at a distinct competitive disadvantage.

In sum, because the Commission cannot impose usage-based assessments on entities that are not telecommunications carriers, and because exempting entities that use the system from

²³ See *supra* note 15.

²⁴ See *Third Report and Order*, ¶ 53.

²⁵ *Petition*, at 1.

assessment violates the requirement of competitive neutrality, the Commission must reject BellSouth's proposal.

**B. Applying a Usage-Based System to Carriers Would Violate the Act's
"Competitively Neutral" Requirement**

Vonage agrees with the numerous commenters in this proceeding that argue that BellSouth's proposed methodology would violate the "competitive neutrality" requirement of the Act. To justify its methodology, BellSouth claims that market conditions have changed enough to warrant such a move. Vonage, however, agrees with those commenters, such as T-Mobile and the Connecticut Department of Public Utility Control, that the telecommunications market has not matured to the point that the Commission's prior findings are no longer valid.²⁶ VoIP remains in its infancy, especially when compared to the nationwide ILEC footprint.²⁷ Further, numerous areas of the country remain without any CLEC presence today.²⁸ As such, it is clear that using BellSouth's methodology would affect all new entrants, including CLECs and VoIP providers, disproportionately.

In the Petition, BellSouth notes that a 1000-block of numbers allocated to a provider for pooling purposes would generate 1000 billable transactions, resulting in over \$1000 in

²⁶ "[T]he current level of competition in the telecommunications marketplace may not be as robust as that suggested by BellSouth." *See BellSouth Corporation Petition for Rulemaking to Change The Distribution Methodology for Shared Local Number Portability and Thousands-Block Number Pooling Costs*, Comments of the Connecticut Department of Public Utility Control, RM-11299, at 3 (filed Jan. 5, 2005) ("*CTDPUC Comments*").

²⁷ *See* Matthew Fordahl, *Vonage to get Internet Phone Competition* (USA Today April 13, 2005) (citing approximately 3 million VoIP subscriber "lines" as of August 2005). *See also* FCC, *Local Telephone Competition: Status as of December 31, 2004* (July 2005), available at: <http://www.fcc.gov/wcb/stats> (citing 145.1 million ILEC lines as of December 2004).

²⁸ *See* FCC, Wireline Competition Bureau, Industry Analysis Division, *Local Telephone Competition: Status as of December 31, 2004*, Table 14 (July 2005) (noting nearly 22% of United States ZIP codes are unserved by any CLEC as of December 2004).

“transaction costs” or “contribution” per block of numbers received.²⁹ Any such costs imposed on a new entrant to a particular market would clearly violate the Commission’s competitive neutrality test by “giv[ing] one service provider [the incumbent with existing numbering resources obtained at no cost] an appreciable, incremental cost advantage over another service provider [the new entrant] when competing for a specific subscriber.” BellSouth fails to acknowledge that small service providers and new entrants disproportionately utilize 1000-block assignments,³⁰ would be disproportionately affected by such a methodology, and would therefore be competitively disadvantaged by such a change.

A usage-based charge would dramatically shift contribution obligations based on whether a carrier, at a particular time and location, was required to perform a disproportionate number of transactions. Such situations would likely occur during both initial market entry and market expansion.³¹ A usage-based system would only serve to act as a barrier to entry in both situations,³² and would reduce overall competition in the marketplace by disproportionately favoring large, incumbent carriers over new market entrants and small operators.

There is no justification for adopting BellSouth’s proposed usage-based methodology. In adopting the system in place today, the Commission correctly stated that the allocation of costs on a per number (or per minute charge) would not be competitively neutral. “In particular, we

²⁹ See *Petition*, at 10.

³⁰ See generally *Numbering Resource Optimization, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Telephone Number Portability*, Third Report and Order and Second Order on Reconsideration, 17 FCC Rcd. 252, ¶ 36. (2001) (“pooling results from extraordinary growth of subscribership and the provision of new services in recent years, as well as the entry of new carriers that require blocks of numbers in each rate center.”).

³¹ See *Time Warner Opposition*, at 4

³² See *CTDPUC Comments*, at 3 (“A change in the cost allocation mechanism as suggested by BellSouth could result in the erection of barriers to entry to new service providers thus slowing the adoption and deployment of new technologies.”).

believe that such a mechanism would penalize new CLECs or other entrants ... that require large quantities of numbers to provide their services.”³³ Further, the Commission rejected usage-based charges because they would cause an appreciable incremental competitive disadvantage to any class of carrier forced to use LNP more than any other class of carrier. This concern remains valid today. New entrant CLECs, VoIP providers, and other service providers rely on LNP necessarily more than incumbent carriers with whom they compete for customers. As noted by Time Warner, if the incumbent “wins” the customer, it is not likely that they will require LNP (or new blocks of numbers generally). However, if a new entrant “wins” the customer, it is highly likely that they will require the use of LNP or the use of new numbers to accommodate those new subscribers.³⁴ As recognized by the Commission, “[d]istributing the shared costs among telecommunications carriers in proportion to database use would shift these costs to telecommunications carriers that win more customers because such carriers will perform more uploads.”³⁵ This reasoning remains valid today, and nothing in the market has changed to justify reversing these findings and adopting BellSouth’s proposal.

III. CONCLUSION

Based on the foregoing, Vonage urges the Commission to deny BellSouth’s Petition. As described herein, the relief sought by BellSouth would violate the Act if applied to non-telecommunications service providers using numbering resources, such as SBC-IS. Moreover, imposing a usage-based mechanism on carriers would violate the Act’s “competitive neutrality”

³³ *Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd. 7574, ¶ 207 (2000).

³⁴ *See Time Warner Opposition*, at 6.

³⁵ *Third Report and Order*, ¶ 88.

requirement because it would give incumbents a competitive advantage against CLECs and other new market entrants.

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